

THE WATCHDOG

A Periodic Newsletter from
The Office of the United States Trustee – Region 16

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This is the first issue of The Watchdog being published under my tenure as United States Trustee for Region 16. As stated in the last issue of The Watchdog, on November 24, 2003, I was appointed as U. S. Trustee for an interim period, when former U. S. Trustee Maureen Tighe was appointed to serve as a

Bankruptcy Judge for the Central District of California. I have served as U.S. Trustee for Region 15 (encompassing the Southern District of California, Hawaii, Guam and the Northern Mariana Islands) since May, 2003. Prior to my appointment, I served as an Assistant U.S. Attorney for over eight years, and worked in private practice for nearly an equal period of time, representing parties in bankruptcy cases and proceedings. Having spent a significant portion of my legal career practicing in the Central District of California, I am familiar with the high level of practice within the District, and the outstanding caliber of the District's federal judiciary.

This publication is one of the many fine institutions implemented under the tenure of Judge Tighe, and serves as an effective means to communicate the outstanding efforts of Region 16's employees. Judge Tighe's professional efforts have embodied the spirit of public service, with nearly 6 years of service as United States Trustee and 17 years with the Justice Department. It would be impractical to list in these remarks her many accomplishments and contributions. However, it is noteworthy to state that her work had a profound, positive impact on the United States Trustee

Program, the bankruptcy legal profession and practice, and the community at large. While both the Justice Department and the Program will miss her continued service, we wish Judge Tighe the best in her recent appointment to the bench, and are heartened to know that she will continue to use her significant talents in service with the federal judiciary.

I have high hopes for the upcoming New Year, both for Region 16 and the bankruptcy community at large. As reflected in this issue of The Watchdog, the United States Trustee Program continues its outstanding work in civil and criminal enforcement, public outreach and debtor education. The recent appointment of eight additional trustees to the Chapter 7 panel has increased the pool of outstanding trustees serving in the Central District of California and enhanced their ability to carefully review, monitor and administer the cases in which they are appointed to serve.

The Central District, as well as all Southern California, faces a series of challenges. The United States Trustee Program must directly and indirectly, through the Trustees we supervise, realign our resources in the face of reduced caseloads and reduced budgets. Accomplishing this, while continuing our efforts in Affirmative Civil Enforcement, is our goal. I know that our fine dedicated employees, working in cooperation with our trustees, will continue to meet our mission statement to promote the efficiency and preserve the integrity of the bankruptcy system.

Steven J. Katzman
United States Trustee

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CRIMINAL CASES

Former Attorney Sentenced for Fraud

As reported in the previous issue of *The Watchdog* **Steven A. Dayton**, a former attorney, was indicted in March for making false statements and creating fake bankruptcy court documents, including a forged bankruptcy court order that purported to discharge the debts of two of his former clients. Dayton made the statements and created the false documents to conceal a scheme to defraud the former clients. Dayton accepted a fee from these clients to file a bankruptcy case that he never filed. In June 2003, Dayton pleaded guilty to one count of bankruptcy fraud (18 U.S.C. § 157(3)). On November 3, 2003, Dayton was sentenced to probation for three years, fined \$1,000 and given a mandatory special assessment.

Debtor Pleads Guilty to Bankruptcy Bust-Out

Valery Vasserman of Tarzana, CA pleaded guilty on October 15, 2003 in the Central District of California ("Central District") to 10 counts, including conspiracy, mail fraud, and wire fraud in connection with a "bust-out" scheme that used a defunct company to acquire millions of dollars in credit with no intent to repay.

Losses from the scheme were alleged to be approximately \$11 million, with Vasserman directly responsible for approximately \$4.5 million. Vasserman then filed bankruptcy for himself and the company to avoid paying debts. His wife Klara pleaded guilty in July to participating in the scheme, admitting that they spent over \$350,000 of the fraud proceeds at retailers such as Tiffany's, Saks Fifth Avenue, and Neiman-Marcus. The Office of the U.S. Trustee ("UST") assisted in the prosecution of the case.

Two Debtors Plead Guilty to Bankruptcy Crimes

On 12/15/03, **Denise Carter, aka Denise Brown**, was charged with 18 U.S.C. §152(3), for failing to list her ownership in a house on her bankruptcy schedules, and under 42 U.S.C. 408(a)(7)(B) for using a false Social Security Number ("SSN") in her bankruptcy case.

On 12/17/03, **Allie Gloria East, aka Nicole King**, pleaded guilty to charges of making false statements in her bankruptcy case, including failure to disclose five bank accounts, filing a fraudulent declaration denying her use of aliases and using a false SSN on a credit card application.

Debtor Sentenced to 16 Months in Prison

On January 26, 2004, **Thomas R. Reyes** was sentenced to 16 months in prison relating to his having pled guilty to one count of bankruptcy fraud. Reyes was one of thirteen defendants charged as part of a bankruptcy fraud sweep in Santa Ana in March 2003. Reyes was indicted for attempting to defraud creditors of Reyes and his wife, Rita B. Reyes, by creating a false bankruptcy document and faxing it to the Orange County Sheriff's Office to thwart a creditor's lawful effort to garnish Rita Reyes' wages. Reyes also made false statements to conceal his filing of at least four prior bankruptcies. The UST referred the matter to the U.S. Attorney after having obtained the dismissal with prejudice of Reyes' Chapter 7 case. Reyes, who violated the terms of his pre-trial release, has been in custody since October 16, 2003 pursuant to a bench warrant issued by the District Court judge. Reyes has appealed his sentence.

CHAPTER 11

Debtor Ordered to Cease Operations

Judge Kathleen T. Lax of the San Fernando Valley Division of the U.S. Bankruptcy Court ("Court") ordered Chapter 11 debtor **Advanced Metal Products, Inc.** to cease operations until it obtained appropriate insurance. UST bankruptcy analysts observed the debtor's employees working in dangerous conditions with heavy machinery, including a two-story hydraulic press with a continuous flame, heavy machinery, and hazardous chemicals. They further learned that the debtor had no workers' compensation, fire, theft, or product liability insurance. At a hearing set within two business days of the UST's filing of an ex parte motion to convert or dismiss the case, or in the alternative to appoint a trustee, the Court ordered the debtor's operations shut down until insurance was in place.

Chapter 11 Debtor Pays Sanctions for Tardy Compliance

Judge Lax approved a stipulation under which Chapter 11 debtor **Brian Dozier** agreed to the payment of additional quarterly fees, dismissal of the case, and payment of compensatory sanctions to the UST. The UST initially applied to convert the case to one under Chapter 7, alleging that the debtor continually failed to file required post-confirmation status reports, provide disbursement information, or pay quarterly fees owed to the UST, despite a stipulated order that he would comply or face conversion. After the UST sought conversion, the debtor provided the delinquent reports and fees. The UST applied for compensatory sanctions, arguing that the debtor should not be permitted to simply become current without further consequences, and to prevent an abuse of process, the UST should be compensated for the time spent on its application.

Court Ordered Appointment of Chapter 11 Trustee for Medical Practice

In the case of **Eye of the Valley Medical Clinic, Inc.**, Judge Lax ordered the appointment of a Chapter 11 trustee. Amy Goldman was appointed as the trustee. The debtor and the principal of the

debtor, Dr. Marco Fabrega, owed substantial taxes and over \$400,000 to the principal's former spouse. Based on evidence that Dr. Fabrega had not listed all of his bank accounts, had not kept accurate records, had allegedly used cash for undocumented transactions, and had paid his present spouse a salary without her commensurate contribution to the practice, together with the fact that he had not filed a plan of reorganization, the Court found that the appointment of a trustee would be in the best interests of the creditors and the estate.

CHAPTER 13

The UST brought a Motion to Dismiss the Chapter 13 Case of **Sunny Omoteese**. Judge Mitchel R. Goldberg of the Riverside Division of the Court granted the hearing on shortened notice and dismissed the case with prejudice. It appears that Omoteese filed at least four Chapter 13 cases, all with different SSNs. Apparently forum shopping as well, Omoteese filed the cases in four of the courts within the Central District before finally being stopped by the UST's motion in Riverside. Although only \$3,100 in unsecured debt will be repaid, the debtor will be prevented from using the bankruptcy system to delay foreclosure on three secured loans on three parcels of real property.

BANKRUPTCY PETITION PREPARERS

UST Beats *We The People* In U.S. District Court

In two unrelated cases, U.S. District Court Judge Gary A. Feess affirmed the rulings of Judge Peter H. Carroll of the Riverside Division of the Court that Bankruptcy Petition Preparer ("BPP") **We the People** violated §110(g)(1) by taking filing fees from debtors for immediate transmittal to the Court in the form of a money order or cashier's check. The District Court held the statute's plain language barred the BPP from receiving or collecting the fee in any form.

Bankruptcy Petition Preparers (BPPs) Violate 11 U.S.C. §110 in Four Separate Cases

► On 12/05/03 Judge David N. Naugle of the Riverside Division of the Court granted the UST's

motion for fines and disgorgement of fees under §110 against BPPs **Bianca Campuzano and National Institute Legal Center, Inc.** for collecting the court filing fee from debtor and giving legal advice with respect to debtors' exemptions and the differences between Chapters 7 and 13. The Court fined the BPPs \$1,000, enjoined them from the unauthorized practice of law and ordered disgorgement of their entire fee of \$320 to the debtors.

► On 12/8/03, Judge Meredith A. Jury of the Riverside Division of the Court granted the UST's motion for fines and disgorgement of fees under §110 against BPPs **Oscar Snow, Moreno Valley Legal Center and/or National Institute Legal Center** for charging in excess of the allowed \$200 fee, taking possession of the filing fees and engaging in the unauthorized practice of law by giving legal advice. Based on discovery conducted by the UST, the Court found that Snow perjured himself in his reply papers. The Court fined the BPPs \$1,000, ordered disgorgement of \$460 in fees to the debtor, and permanently enjoined **Snow** from preparing any documents for filing with the Court.

► On 12/15/03, Judge Naugle granted the UST's motion for fines and disgorgement of fees under §110 against BPPs **Oscar Snow Bianca Campuzano and National Institute Legal Center** for receipt by a BPP of the filing fee and giving the debtor legal advice regarding the selection of exemptions and the differences between Chapters 7 and 13. The Court ordered the BPPs to disgorge all fees of \$200 to the debtor, fined them \$500, and enjoined them from the unauthorized practice of law. They were also enjoined from preparing any bankruptcy documents for compensation for filing with the Court.

► On 1/12/04, Judge Peter Carroll took the UST's §110 Motion under submission against BPPs **Oscar Snow and National Institute Legal Center**. The BPPs and the debtor opposed the Motion. The UST deposed the debtor and Oscar Snow. The transcripts were submitted as evidence at the continued hearing. On 1/29/04, the Court entered its Memorandum Decision fining BPPs \$500 for violation of §110(f), ordering full disgorgement of all fees of \$200 for the unlawful practice of law, ordering that an additional fine of \$500 would be imposed if the BPPs did not satisfy the fine and disgorgement in full within 30 days, and prohibiting the BPPs from

preparing any documents for compensation for filing with the Court.

Fines, Disgorgements, Injunctions and Other Actions

BPP **Tom Choi** was enjoined by Judge Peter Carroll from the unauthorized practice of law for explaining the differences between Chapters 7 and 13 and explaining exemptions. Choi was also enjoined from accepting or processing the filing fee in any future bankruptcy cases.

Judge Robert W. Alberts of the Santa Ana Division of the Court permanently enjoined **Ora Gardener** from acting as a BPP under §110 for the unauthorized practice of law, and ordered her to disgorge the sum of \$175 to debtor. Gardner had advised debtor which exemptions to list for his residence and Harley Davidson and had apparently advised debtor that he could keep them both. However, the exemption listed for the Harley Davidson was improper and debtor was informed that the vehicle might have to be sold. He was advised to seek the advice of counsel in order to amend his scheduled exemptions.

Judge Jury ordered BPP **Michael Goldberg** to disgorge his entire fee of \$600 to the debtors and fined him \$500 for violation of §110(h) for explaining exemptions and the differences between Chapters 7 and 13. The Court also enjoined Goldberg from the unauthorized practice of law and from preparing documents for compensation of any sort for filing in the Central District.

Judge Naugle enjoined BPP **Jacqueline M. Knackert (Help U-Law)** from preparing any documents for filing with the Court. The UST brought a motion for fines and/or disgorgement of fees based upon information provided at the §341(a) meeting. The Court continued the matter to allow the debtor's deposition. After issuing three subpoenas, the deposition was finally taken. Debtor made several admissions, the most pertinent of which was that the Court filing fee was given to Knackert despite Knackert's denial, in writing, of taking it.

BPPs **Gloria G. Maldonado and Shellie Relyea** were similarly enjoined by Judge Jury from the unauthorized practice of law for explaining exemptions and the differences in the chapters. Maldonado was additionally ordered to disgorge \$120 in overcharged fees.

In another case where **Gloria Maldonado** was the BPP, she violated 11 U.S.C. §110 (c) by failing to disclose her SSN on the petition and violated §110(d) by failing to give the debtor a copy of the documents signed by the debtor before filing them with the Court. Maldonado reported that she could not afford the substantial fine set forth in the judge's tentative ruling. In settlement, Judge Peter Carroll accepted a stipulation regarding a permanent injunction against her preparing documents for compensation for filing with the Central District. The Court also ordered her to disgorge \$125 in overcharged fees to the debtor. Also in another case where Maldonado prepared the documents, Judge Carroll ordered Maldonado to disgorge \$125 in overcharged fees.

Judge Peter Carroll fined BPP **Jennifer Meeks and Able 2 Help Services** \$300, jointly and severally, for violation of §110(f)(1). The BPP had used the word "legal" in an advertisement in the Yellow Pages by referring to the business as Legal Document Preparation and advertised to do bankruptcies for debtors. Meeks and Able 2 Help Services were also ordered by Judge Naugle to disgorge all fees of \$200 to debtor, and were enjoined from the unauthorized practice of law.

On 12/16/03, Judge Naugle fined BPP **Emily Moreno** \$100 for accepting the Court filing fee and ordered the \$200 preparation fee disgorged. Further, Moreno was enjoined from engaging in the unauthorized practice of law based upon the debtor's testimony. Schedule C contained claimed exemptions. However, at the time of the hearing, debtor represented that she did not know what an exemption was, allowing the Court to draw the inference that Moreno completed Schedule C on behalf of the Debtor.

Judge Peter Carroll fined BPPs **Eugene Osborne and Osborne Paralegal Services** \$2,000 for violation of §§110(d),(e),(f),(g) and (h), which included receiving payment from debtor of the Court filing fees, and ordered them to disgorge all fees of \$650 to debtors. The Court also enjoined the BPPs from the unauthorized practice of law, from using the word "legal" in advertising and from preparing documents for compensation for filing with the Court.

Judge Peter Carroll fined BPP **Delio M. Ospino** \$500 for taking the filing fee from the debtor and ordered Ospino to disgorge \$200 in fees to debtor for

giving legal advice regarding exemptions and the differences between Chapters 7 and 13. The Court enjoined the BPP from preparing documents for filing in the Court until the fine and disgorgement were satisfied in full.

The UST filed a motion for fines, disgorgement of fees and/or injunctive relief against BPP **Lenore Palmer**. Palmer filed an opposition, including a declaration by the debtor that recanted debtor's earlier testimony. Debtor was deposed to discover which declaration was accurate. At the deposition, the debtor was surprised to see her declaration in Palmer's opposition. Debtor has apparently not seen it before. Judge Naugle enjoined Palmer from preparing any documents for filing with the Court, and admonished her to return all fees she had received for the preparation of documents in any other cases that had not yet been filed.

Judge Naugle permanently enjoined BPPs **Tony Raya and Tony's Tax and Real Estate Service** from preparing any bankruptcy documents for filing with the Court. Raya failed to sign the petition, to disclose his SSN, and to disclose fees charged. He accepted the filing fee from the debtor and charged debtor \$400, which was twice the allowed amount. The Court fined Raya \$2,000 and ordered him to disgorge the \$400 fee to the debtor.

On 12/11/03, the UST obtained an order from Judge Alberts directing BPP **Francesco Rebollo** to disgorge \$750 in fees and pay a \$3,500 sanction. Rebollo received a fee from the debtors in excess of what was disclosed to the Court and listed only **Janet Anisman of Justice For All** as the preparer in the case. After the initial hearing, Rebollo stated to the UST that he was working with an attorney and Anisman in this case as well as in other cases. Although given a letterhead by Rebollo with the attorney's former address, neither the UST nor the State Bar of California were able to verify that such an attorney existed. Rebollo did not appear at the follow-up evidentiary hearing. Anisman, who apparently had no contact with the debtors but allowed her name to be used by Rebollo, also did not appear and was sanctioned \$750. The UST is investigating other possible cases where these individuals are involved.

Judge Peter Carroll ordered BPP **Patricia Vaughan** to disgorge all fees received from the debtor in the amount of \$200 for the unauthorized practice of law

and fined her \$500 for violation of §110(g). The Court also ordered that Vaughan be prohibited from preparing documents for filing in the Court for compensation of any sort until the fine and disgorgement were fully satisfied.

CPAs Bound by BPP Guidelines

BPP **Ira Berkowitz** agreed to disgorge a total of \$600 to two debtors whom he had charged for the preparation of bankruptcy petitions. On the UST's motion under §110, Berkowitz suggested that because he was a certified public accountant, he was not bound by the Bankruptcy Petition Preparer Guidelines. However, he conceded that he was not an attorney and not authorized to give legal advice. He agreed to refund the \$300 that each debtor had paid to him, and to neither collect Court filing fees nor engage in the unauthorized practice of law. The stipulations were approved by San Fernando Valley Division Judges Arthur M. Greenwald and Geraldine Mund, respectively.

BPP Given One Week to Change Advertising

Legal Document Assistant **Norma L. Guerrero** advertised her "Paralegal Service" in the Spanish language periodical *Novedades* August 25, 2003 issue, which included an offer of her "Bancarrotas" services. The UST brought a motion under § 110 for fines and to enjoin Ms. Guerrero, among other things, from using the word "paralegal" in her advertising. Judge Jury granted the motion on 10/21/03, enjoining Guerrero from engaging in the unauthorized practice of law and from using the word "paralegal" in her advertising. Guerrero was given until 10/28/03 to change her advertising or she would be permanently enjoined from bankruptcy document preparation in the Central District of California.

Failure to Pay Fines or Disgorgements

Judge Naugle permanently enjoined BPPs **Larry S. Nava, Sr., L.S. Nava & Associates and Damien Robbins** from preparing bankruptcy documents for filing with the Court for failure to pay fines and/or disgorgements previously ordered by the Court.

Jean Ruffin and The Legal Beagle, were enjoined as BPPs in 1999 by Judge Jury based upon Ruffin's failure to pay Court- ordered fines and disgorgement in excess of \$8,000. Ruffin reappeared as **The Legal Diva** in 2003 and began preparing documents

for filing with the Court, in one case transposing the two middle numbers of her SSN on the disclosure forms. On November 7, 2003, Ms. Ruffin was again enjoined by Judge Naugle, this time as the Legal Diva and with her correct SSN.

In another case, on 12/23/03, **Ruffin and The Legal Diva** were fined \$500 each, jointly and severally, for a total of \$1,500 for §110(g), (d) and (f) violations. The BPPs were also ordered by Judge Naugle to disgorge the entire fee of \$200 for the unauthorized practice of law and were enjoined from preparing documents for compensation until the fines and disgorgement were satisfied in full.

BPP **Terron Thomas** was sanctioned \$1,000 for contempt of the Court's prior order of disgorgement and fine for violation of Section 110(g). Thomas, who had been prohibited from preparing documents for filing in the Central District pending payment of a \$500 fine and a \$400 disgorgement, was found in contempt of the Court's Order of July 30, 2003. Judge Peter Carroll sanctioned the BPP an additional \$500 in favor of the Court and awarded \$500 to the UST for attorneys' fees. Judge Carroll indicated that he felt bound by the 9th Circuit decision of *In re Dyer*, and therefore could not issue punitive sanctions. If the BPP continues in contempt, it may be necessary to go to the U.S. District Court for further sanctions.

In a later case, BPP **Terron Thomas** was fined \$500 for violation of §110 (g) for accepting payment of the Court filing fee from the debtor. Judge Peter Carroll also ordered Thomas to disgorge \$200 of her entire fee for the unauthorized practice of law in giving debtor advice about exemptions. Thomas was prohibited from preparing petitions or other documents for filing with the Court until the fine and disgorgement were satisfied in full.

ATTORNEY ACTIONS

\$300 Attorney Fees Disgorged

Judge Jury granted the UST's motion for disgorgement of fees in the amount of \$300 from attorney **Stanley M. Becker**. Becker failed to represent debtors David and Karen Langehennig in defending the UST's §707 dismissal motion and

failed to request relief as counsel of record, compelling debtors to represent themselves or face dismissal of their case. Judge Jury reasoned that Becker was obligated to take affirmative action in his representation of the debtors and failed to do so.

Discipline Panel Revokes Right to Practice

Judges Peter Carroll, Jury and Naugle referred attorney **Susan Jordan** to the U.S.B.C.'s Discipline Panel based upon her continued failure to pay Court-ordered fee disgorgements and fines. On December 3, 2003, the Discipline Panel revoked Jordan's right to practice before any bankruptcy judge in the District based upon her violation of legal and ethical responsibilities. The Panel stated that her refusal to follow court orders was endemic and she had made no attempt to carry out her duties as an officer of the Court. The Discipline Order provides that it will be forwarded to the United States District Court and to the State Bar of California. Jordan appealed the order and made an application for stay pending the Appeal. The stay was denied.

Attorney Ordered to Disgorge Fees and to Appear at his § 341(a) Meetings

Judge Erithe A. Smith of the Los Angeles Division of the Court granted the UST's motion for disgorgement of fees and ordered attorney **David Marh** to return \$500 to a debtor and to personally appear with his clients at the § 341(a) meeting of creditors. The Order resulted from the debtor appearing at two §341(a) meetings with the same appearance attorney. No creditors were scheduled on the debtor's bankruptcy papers (except the IRS with zero dollars owing). The statement of financial affairs was incomplete and the IRS was listed on the mailing matrix with an incorrect address. At both meetings, the chapter 7 trustee asked the debtor why the bankruptcy was filed. Neither the debtor nor the appearance attorney offered an explanation. Judge Smith granted the UST's separate motion to dismiss the case under § 707(a).

Attorney Agrees to Discipline and Disgorgement

A UST investigation revealed that attorney **Bernal P. Ojeda** failed to meet with or consult with his clients in 17 cases. Ojeda then initiated discussions that culminated in his stipulating to return all fees in the 17 cases in the total amount of \$15,450 and to have the matters referred to the Court's Discipline Panel.

Ojeda admitted that he did not adequately supervise his staff with regards to the interview of the debtors, the preparation of debtors' petitions and other bankruptcy documents.

Attorney Agrees to 30 Month Voluntary Suspension and Sale of Practice

Claudia L. Phillips agreed to not engage in the practice of bankruptcy law in the Central District for 30 months. Phillips, who had one of the largest consumer bankruptcy practices in the country, filing over 1,200 petitions in 2002, also agreed to sell her bankruptcy practice. Phillips had earlier been referred to the Court's Discipline Panel by Judge Ernest M. Robles of the Los Angeles Division of the Court. Judge Robles issued findings of fact and conclusions of law that Phillips and the other attorneys in her office failed to provide legal services to a debtor and failed to meet with the debtor prior to filing debtor's petition. Judge Robles found that Phillips' non-attorney husband, Ken Phillips, provided legal advice to the debtor and concluded that Claudia Phillips aided in the unauthorized practice of law, failed to adequately supervise the work of non-attorneys, and failed to perform legal services with competence. Other inappropriate conduct cited by Judge Robles included: failure to meet with and consult with clients; failure to abide by Court orders; improper solicitation of client, and allowing a staff member to sign the debtor's name, as well as Phillips' name, on bankruptcy documents. The Discipline Panel approved a Stipulation in Lieu of Discipline on January 16, 2004.

§ 727 ACTIONS

Discharge Waived Due to Failure to Disclose Transfer of Real Property

Mahtabur & Saleha Rahman sought to discharge \$80,089 of unsecured debt. Discovery by the UST revealed that debtors had failed to disclose the transfer of real property for no consideration within a year prior to their filing. The debtors eventually admitted they had transferred title to their residence to their son several months pre-petition. The son encumbered the residence with a first trust deed and obtained \$314,000 in loan proceeds from a third party. He also placed a second trust deed on the

property purportedly to secure a \$25,000 promissory note in favor of the debtors. The debtors failed to adequately explain what their son did with \$250,000 of the loan proceeds. The UST filed a complaint objecting to debtors' discharge under §§ 727(a)(2) and (a)(4). A stipulated waiver of the discharge was approved by Judge Alberts on December 5, 2003.

Debtor Waives Discharge After False Oaths Revealed

Debtor **Hui Ok Lee** attempted to discharge \$156,300 in unsecured debt. The UST alleged that debtor had made false oaths by failing to disclose her ownership in a \$600,000 residence and liquor store business. A search of public data base records revealed that debtor was the president and director of a corporation named Super 99, Inc., had guaranteed a loan for the business secured by a UCC filing with the Secretary of State, and owned the real property listed on her petition as her place of residence. A stipulation for waiver of discharge was submitted by the parties to Judge John E. Ryan of the Santa Ana Division of the Court under §727(a)(10). The Court entered the stipulated judgment on December 1, 2003.

Discharges Denied for False SSN

Judge Alberts denied the discharge of **Felipe Cadillo Ramirez** pursuant to §727(a)(4). Debtor had sought to discharge his debt using a false SSN on his bankruptcy petition. When asked under oath at his meeting of creditors to provide proof of his SSN, he provided the Chapter 7 Trustee with a Cigna Health Insurance Card with his purported SSN imprinted on it. Debtor also testified that he obtained his SSN in year 2000 in California. A search of public database records by the UST revealed that the SSN listed by debtor on his petition was issued in 1998 in the State of New Mexico. The UST confirmed with the Social Security Administration that the SSN listed on debtor's petition was not assigned to him. Based on these false oaths by debtor, the UST filed a complaint objecting to the discharge of his debt.

Jose Loreto Ramirez sought to discharge \$31,000 of debt using a false SSN on his bankruptcy petition. The UST determined the SSN was assigned to a Pasadena woman. Public records indicated that the debtor had used at least two other SSNs not assigned to him. When asked about the SSN at the §341(a) meeting, the debtor lied under oath to the

Chapter 7 trustee. The UST filed a complaint objecting to discharge pursuant to §727(a)(4). Judge Barr of the Santa Ana Division of the Court rendered judgment in favor of the UST and denial of the discharge was entered 10/9/03.

SUBSTANTIAL ABUSE

Case Dismissed for Failure to Appear at Continued §341(a) Meeting

Judge Sheri Bluebond of the Los Angeles Division of the Court dismissed the case of **Hong Zhou** with a 180 day bar for failure to appear at two continued §341(a) examinations following examination and requests for documents by both the trustee and the UST at the initial §341(a) examination. The debtor testified that she transferred money to her husband in South East Asia to help him start a janitorial business. \$133,738 in unsecured debt was not discharged.

False Day Care Deduction Leads to Dismissal

On 11/18/03, Judge Naugle granted the UST's §707(b) motion to dismiss the case of **Lincoln Ward, Jr.** Ward's bankruptcy documents stated that he was married, disabled and could not care for his children when his wife was at work. His tax returns disclosed that he had filed "head of household." The non-filing spouse's tax returns showed that she filed as "single." Debtor listed monthly day care expense of \$375 on his Schedule J, yet the day care expense was not claimed as a deduction on debtor's tax returns. Investigation revealed that the \$375 was purportedly paid to debtor's mother who resided with him. Dismissal of the case will result in repayment of over \$37,000 in unsecured debt.

Credit Card Debt Not Dischargeable

Lesley and James Peterson sought to discharge over \$130,000 of debt, including over \$120,000 of credit card debt. The UST filed a §707(b) motion to dismiss alleging that certain Schedule J monthly expenses were excessive for two people, e.g., food-\$1,200, transportation-\$980, and maintenance expense-\$800 when the debtors did not own their home. Judge Barr found the debtors' testimony in Court regarding purported expense modifications not credible and dismissed the case.

In the case of **Debra Santos**, the UST filed a motion to dismiss under §707(b) based on the availability of surplus income, including monthly deductions aggregating \$841.54 for contributions to a 401k plan and repayment of a loan on the same 401k plan. Debtor's schedules showed that her 401k account contained over \$122,000 at the time of her Chapter 7 filing. The OUST also argued that a monthly recreational expense of \$250 for a single person and home maintenance expense of \$50, where the Debtor owned no real property, were excessive. With these modifications, debtor had enough surplus income to pay 62% of her credit card debt of \$99,047 over three years. Judge Alberts agreed with the UST's position and dismissed the case as a bad faith filing.

Recreation Budget of \$600 Disallowed

The schedules of **Christopher and Joyce McShan** demonstrated disposable income of \$1,953, which included a recreation budget item of \$600. This income would repay over 99% of the unsecured debt over three years. Judge Naugle granted the UST's motion to dismiss, resulting in non-dischargeable unsecured debt of over \$70,000.

Earnings Statements/Tax Returns Allow Repayments

Judge Naugle granted the UST's §707(b) motion to dismiss the case of **Richard and Laurie Boutwell**. By adjusting income to add a \$5,200 income tax refund and reducing overstated expenses, debtors were prevented from discharging \$140,675 in unsecured debt.

Judge Naugle granted the UST's §707(b) motion to dismiss the case of **Timothy and Cheryl Fagan**. After adjusting income by adding an \$8,000 income tax refund and subtracting apparently preferential payments from expenses, debtors were prevented from discharging \$224,149.65 in unsecured debt.

Duncan T. and Linda May Turrentine reported a deficit of \$466 but their earnings statements and tax returns revealed that they could pay all of their creditors in three years. Judge Peter Carroll granted the UST's §707(b) motion to dismiss, preventing the discharge of \$87,043 in unsecured debt.

Understated Income Allows Repayment of \$70,964 Unsecured Debt

Judge Naugle dismissed the case of **Sylvia and Ernie Hernandez** pursuant to the UST's §707(b) motion, preventing the discharge of \$70,964 in unsecured debt. The debtors understated their income and, initially failed to disclose on Schedule I, among other things, the existence of their two children.

Understated income and Overstated Expenses Allow Repayment of Unsecured Debt

Judge Jury dismissed the case of **Ricky and Phyllis Risner** pursuant to the UST's §707(b) motion. Investigation revealed that debtors understated their income and overstated expenses, in addition to disclosing positive disposable income on Schedules I and J. The dismissal of the case will result in repayment of \$76,162 in unsecured debt.

Judge Robin L. Riblet of the Santa Barbara Division of the Court granted the UST's motion to dismiss the case of **Benjamin John Tibbin** for substantial abuse under §707(b). The debtor sought to discharge over \$77,000 in unsecured debt. Although the debtor's original schedules showed a monthly net loss of about \$670, the debtor amended his schedules to show a true monthly surplus of over \$1,300. The UST cited evidence, provided by the debtor's former spouse, that the debtor had not provided a complete accounting of his assets in his original schedules and deserved a dismissal.

Cases Dismissed Due to Ability to Repay 100%

In the case of **Karlene S. Chin-Loy**, Judge Jury granted the UST's motion to dismiss the case under §707(b). While the debtor's original Schedules I and J admitted \$1,191 of net monthly disposable income, this sum was insufficient to pay 50% of debtor's unsecured creditors. A review of the debtor's pay-stubs, however, revealed that debtor had failed to properly calculate her monthly income and had tax refunds. These adjustments showed that debtor could pay 100% of her creditors over three years. The Court denied discharge of \$87,509 of unsecured debt.

Judge Ahart dismissed the **Benjamin Conklin** case under a §707(b) motion due to ability to repay 100% of his debts. Conklin had net disposable income of

\$3,079 per month to pay his unsecured claims of \$22,841 within three years.

Valerie J. Earl listed \$134,000 in secured debt and \$21,374 in unsecured debt. She had \$1,925 in disposable income after adjustment of disallowing private school tuition/college expenses for her children. Judge Robles dismissed the case under §707(b) to due to debtor's ability to repay 100% of her debt within three years.

Both Conklin and Earl would have surplus disposable income over and above payments made under a Chapter 13 plan.

In the case of **Teresa Lynn Corona**, debtor originally listed only \$24 of excess monthly income. However, cancellation of 401(k) contributions and loan payments allowed her to repay 100% of her creditors over three years. Judge Peter Carroll denied discharge of \$16,910 of unsecured debt pursuant to the UST's §707(b) motion to dismiss.

Judge James Barr granted the UST's motion to dismiss the case of **Carl Bernard Kite and Donna Cutley Kite** under §707(b). Debtors sought to discharge \$36,759 in unsecured debt while having \$1,833 in monthly disposable income sufficient to pay off 100% of their unsecured debts within 26 months.

In the case **Abelardo and Julia Ramos**, Judge Jury granted the UST's motion to dismiss under §707(b) thus denying discharge of \$25,358 of unsecured debt. While debtors' original Schedules I and J showed income and expenses of \$3,932, less than the average for the State of California, and no excess income, the UST was able to demonstrate that debtors had undervalued their disability income and had a car loan which was due to be paid off in four months. These adjustments yielded a net monthly disposable income of \$595. Additionally, debtors had double-listed some of their debts. The adjustments would result in a 100% plan.

Conversions to Chapter 13

In the case of **Kevyn and Latoya Cleveland**, the UST recalculated the debtors' income from their payroll remittances. Based upon the corrected income and factoring in the debtors' income tax return for the prior year, the UST asserted that the debtors could pay 80.6% of their unsecured debts

over a three year Chapter 13 plan. After the UST's motion to dismiss was filed, the debtors converted their case to one under Chapter 13, thereby preventing the discharge of \$55,020 of unsecured debt. Judge Peter Carroll approved the conversion.

Herman Rodriguez Fajardo filed for a Chapter 7 discharge with approximately \$400 per month in excess income. He could pay over 40% of his debt in three years and nearly 70% in five years. The UST filed a motion to dismiss under §707(b), alleging that the debtor had the ability to repay his \$32,000 in consumer debt. Prior to the hearing, the debtor stipulated to convert his case to one under Chapter 13 to repay his creditors. Judge Lax approved the application to convert.

Cynthia Jane Keller listed approximately \$60,000 in credit card debt, but had nearly \$1,600 in surplus monthly income. The UST filed a motion to dismiss for substantial abuse, showing that the debtor could pay 95% of her consumer debt in a Chapter 13 plan. Judge Mund granted the UST's motion, ordering the case dismissed unless the debtor converted to a 13. The debtor agreed to convert.

Ignatius and Vuenia Loyola voluntarily converted to Chapter 13 after the UST filed a motion alleging that the debtors had the ability to repay their debts. The UST determined that the debtors' payroll deductions included automatic transfers to credit union savings accounts. \$55,511.00 in unsecured debt was therefore not discharged. Judge Bluebond approved the conversion.

Craig Desmond Smith overstated expenses, understated his income and continued to operate a business at a monthly loss of \$500. The UST filed a motion to dismiss the case under §707(b). Based on the UST's motion, the debtors elected to convert the case to Chapter 13. Judge Jury issued the Order converting the case, preventing the discharge of \$98,100 in unsecured debt.

Charles and Sarah Spisak chose to convert their case to one under Chapter 13 after being informed by Judge Goldberg that their case would be dismissed if they did not convert. Mr. Spisak is seventy years old, receives Social Security and a pension, and is a sales manager for Direct Edge, Inc. Mrs. Spisak is a housewife with no other income. Debtors admitted that they had sufficient income to pay a substantial portion of their unsecured debts,

which was estimated by the UST at 80.1% over three years, based upon certain adjustments to their income and expenses. Debtors argued that their future income was uncertain, but provided no proof of this contention.

Grace Yang sought to discharge \$110,926 in credit card debt, while her petition listed continuing expenses for items such as manicures, makeup, hair care, "networking" lunches, recreation, and house cleaning. After the UST sought dismissal for substantial abuse, Yang converted her case from Chapter 7 to Chapter 13. Judge Greenwald approved the conversion.

REPEAT FILERS

Judge Naugle dismissed the first case of **Robert St. Rose Daniel** on 2/3/03 pursuant to UST §707(a) and (b) motions. On 6/9/03, Daniel filed a second case using nearly identical information on the bankruptcy documents as in his first filing. The UST brought a motion to dismiss the case based upon §707(b). Judge Naugle granted the motion compelling Daniel to repay \$108,503 in unsecured debt.

Repeat Filer Barred for 10 years

Peter Hugh Georgi's Chapter 7 petition disclosed only one prior bankruptcy. The UST's research showed that in fact he had filed for bankruptcy protection **no less than 11 times in different venues in Southern California**. Debtor did not state his residential address on his bankruptcy petition, nor did he comply with the Court's order to provide his residential address to the Court and to the Office of the UST. On an Order to Show Cause, and in cooperation with the Chapter 7 Trustee, the UST provided the Court with proof of Georgi's filing history and argued that the debtor's re-filing for bankruptcy 11 times, failure to disclose prior bankruptcies, and failure to state his residential address, violated the Court's Local Rules and constituted an abuse of the bankruptcy process. Judge Lax dismissed the case and barred the debtor from filing for bankruptcy for 10 years.

EIGHT NEW TRUSTEES JOIN CHAPTER 7 BANKRUPTCY PANEL IN CENTRAL DISTRICT OF CALIFORNIA

Eight new trustees have been appointed to the panel of Chapter 7 bankruptcy trustees who administer cases in the Central District of California.

The trustees are: David L. Hahn, Sam S. Leslie, Elissa D. Miller, and Jason M. Rund in Los Angeles; David R. Hagen and Diane C. Weil in Woodland Hills; and Christopher R. Barclay and David W. Newman in Riverside.

They were selected through published advertisements and other outreach efforts to legal, accountancy, and business organizations, and a rigorous review process by UST personnel. Minimum qualifications for appointment are stated in Title 28 of the Code of Federal Regulations, Part 58. The primary duties of a panel trustee, set forth in 11 U.S.C. §704, include accounting for, collecting, and reducing to money all non-exempt property of the bankruptcy estate and distributing any dividends due and owing to creditors of the estate as expeditiously as possible.

The new appointments bring the total number of Central District panel members to 52, including trustees who handle cases filed in Los Angeles, Riverside, Santa Ana, Santa Barbara, and Woodland Hills.



Christopher R. Barclay is a certified Public Accountant and a principal and responsible shareholder in Mack/Barclay Inc., a business insolvency/reorganization consulting practice. He has served as court-appointed examiner, accountant for the trustee, and responsible

person for the sale of distressed businesses and assets in Chapter 11 proceedings, and has provided business analysis and qualified testimony on complex business, economic, and accountancy issues. A graduate of San Diego State University, Barclay is a Certified Insolvency and Restructuring Advisor (CIRA) and recipient of the 1993 Zolfo Cooper/Randy Waits Silver Medal Award.



David R. Hagen is a founding partner of Merritt & Hagen with 20 years of experience in Chapter 7 and Chapter 13 matters. He is a past President of the San Fernando Valley Bar Association and has served as a Trustee for the LA County Bar Association. Hagen has taught courses for paralegals and has been an instructor in the MBA program at California Lutheran University. Most recently, he wrote Chapter 4 on Pre-Petition Planning in the recently released publication "Individual and Small Business Bankruptcy Practice" published by CEB.



David L. Hahn, a Certified Public Accountant, is a partner in the accounting and consulting firm Hahn Fife & Co. LLP. He has more than 20 years of business and financial experience in private industry and public accounting, including 10 years as an accountant and financial advisor in bankruptcy and reorganization matters. He is a Certified Insolvency and Restructuring Advisor and recipient of the 1997 Zolfo Cooper/Randy Waits Award. He is also a Certified Fraud Examiner. He graduated from Luther College in Decorah, Iowa.



Sam S. Leslie, a Certified Public Accountant, is the founder and managing partner of the CPA firm Leslie, Engell & Associates, LLP, which provides tax, accounting, business, and financial consulting services for individuals, companies, and not-for-profit organizations, including professional services for Chapter 7 bankruptcies and troubled businesses. A graduate of San Diego State University, he is a member of the Tax Division of the American Institute of Certified Public Accountants and the California Society of Certified Public Accountants.



Elissa D. Miller is Of Counsel to the law firm SulmeyerKupetz, where her practice focuses on creditors' rights and business and commercial litigation. She is a member of Women Insolvency Professionals and a board member and officer of the Women's Clinic & Family Counseling Center, a non-profit health and counseling center. She graduated from Southwestern University School of Law.



David W. Newman, who practices with the Bankruptcy Practice Group, Litigation Department of Best Best & Krieger LLP, has 10 years of experience representing Chapter 7 trustees, creditors, and debtors in bankruptcy cases. He is the president of the Inland Empire Bankruptcy Forum and a member of the Board of Directors of the California Bankruptcy Forum. He is a graduate of the J. Reuben Clark Law School, Brigham Young University, in Provo, Utah.



Jason M. Rund is a partner in the law firm Sheridan & Rund, whose practice includes the representation of secured creditors and debtors in bankruptcy cases. Rund also has a background in real estate, with experience as a real estate broker, manager, and attorney. A graduate of Western State University College of Law, he has served as a judge pro tem and arbitrator for Los Angeles County Superior Court and an arbitrator for the Los Angeles County Bar Association Dispute Resolution Services.



Diane C. Weil has practiced bankruptcy and insolvency law for more than 20 years, and is Of Counsel to Andrews & Kurth LLP. Since 1995 she has been a member of the Mediation Panel for the U.S. Bankruptcy Court for the Central District of California. Weil graduated from the University of Southern California Law Center.

CRIMINAL COORDINATOR APPOINTED



Effective December 4, 2003 **Sandy Klein** was appointed as a Regional Criminal Coordinator for the United States Trustee Program in the Central and Southern Districts of California, the District of Arizona, and the District of Hawaii. The announcement was made by Lawrence

Friedman, Director of the Executive Office for United States Trustees.

The U.S. Trustee Program is a component of the Justice Department that protects the integrity of the bankruptcy system by overseeing case administration and litigating to enforce the bankruptcy laws. The Program established a Criminal Enforcement Unit in July 2003 to build upon its efforts to identify, refer, and assist the United States Attorneys in prosecuting bankruptcy fraud. The Criminal Enforcement Unit is headed by Peter Ainsworth, who previously served as a Trial Attorney in the Justice Department's Public Integrity Section and its Office of Consumer Litigation. Sandra Rasnak, Assistant U.S. Trustee in the Program's Chicago office, is the Acting Deputy Chief of Criminal Enforcement. Other Regional Criminal Coordinators are Celeste Miller of Boise, Idaho, and Robert Calo of Philadelphia.

Sandy Klein has been an employee of the U.S. Trustee Program for six years, prosecuting bankruptcy fraud cases as a Special Assistant U.S. Attorney in the Los Angeles office. She created the "Stop Identity Theft Now" videotape, which was co-sponsored by the Program and has been distributed to approximately 10,000 recipients nationwide, and she has lectured across the country on bankruptcy fraud and identity theft issues. She received her law degree magna cum laude from Loyola Law School in Los Angeles, where she now teaches as an adjunct professor, and her undergraduate degree from the University of Lowell in Lowell, Mass.

NEW UST TRIAL ATTORNEY FOR L.A.



Region 16 welcomes Kenneth G. Lau as the newest addition to the trial counsel staff in the Los Angeles field office. Ken was formerly the bankruptcy litigation partner of an Encino commercial litigation firm. His off-duty hours he devotes to pro bono representation of abused children through Public Counsel, serving

on the Board of Directors for *Friends of the Family*, a local family resource center, as well as on the Board of Governors for the Gould Center for Humanistic Studies, a collegiate research institute. He was born and raised in Hawaii and is a graduate of Claremont McKenna College and UCLA Law School.

COMMUNITY OUTREACH

Identify Theft Presentation

On Saturday, October 11, 2003, the Los Angeles office made a presentation on the subject of Identity Theft to a networking group in Inglewood California. The twenty minute presentation emphasized ways to avoid becoming a victim and the need for heightened awareness of this growing crime. By using statistics from the recently released study by the Federal Trade Commission and some examples of how easy it is to become a victim while performing the simplest transaction, the audience was able to personally identify behavior requiring some adjustment.

Approximately 32% of the persons in the room indicated they had been the victim of either identity theft or the misuse of their personal information. The goal of the UST's office in each of its consumer education programs is to disseminate information and provide preventive educational materials affecting consumers who might find themselves in a financial or consumer dilemma.

Evans Consumer Information Fair

In conjunction with National Consumer Protection Week, the Los Angeles Office participated in the 13th annual Evans Consumer Information Fair at

Evans Community Adult School on February 4, 2004. Approximately 33 federal, state, city agencies and departments participated in classroom presentations and staffed information tables. Evans Community Adult School is a multi-ethnic, day and night, school with an enrollment of approximately 12,000 students. This year was the fifth year the Los Angeles office has participated in the fair. Venues of this nature provide the opportunity to distribute information about fraud and abuses of the system and to network with other agencies that may be potential sources of information and referrals as we engage in civil enforcement actions. The U. S. Trustee's table was staffed by Sonny Flores.

CONSUMER DEBTOR EDUCATION

The following brown bag programs are scheduled:



March 11, 2004

Topic: *Chapter 13 for Chapter 7 Lawyers. Recognizing the client who should consider filing under Chapter 13. Advice for the attorney representing debtors in Chapter 13. Avoiding the pitfalls and knowing the rights and responsibilities of the Chapter 13 practitioner.*

Speakers:

Leon D. Bayer, Esq., Bayer, Wishman & Leotta;
Joseph E. Caceres, Esq., Caceres & Shamash, LLP,
Nancy K. Curry Chapter 13 Standing Trustee;
Michelle A. Marchisotto, Esq., Winterbotham Parham
Teeple Marchisotto.

Moderator: Jill M. Sturtevant, Assistant U.S. Trustee

Place: Office of the UST, 725 S. Figueroa Street Suite 101, Ground Floor, Los Angeles

**** DATE CHANGE ****

Meeting scheduled for April 6, 2004 has been changed to **March 30, 2004**

Topic: *Everything You Always Wanted To Know About Exemptions But Were Afraid To Ask*

Speaker: David R. Hagen, Chapter 7 Trustee and Debtor's Counsel

Place: Office of the UST, 21051 Warner Center Lane, Suite 105, Woodland Hills

April 22, 2004

Topic: *Ask Your Panel Trustee – An open discussion of best practices in representing debtors in Chapter 7.*

Panel: Chapter 7 Panel Trustees –

Helen Ryan Frazer
Jason M. Rund
Edward M. Wolkowitz
Nancy H. Zamora

Moderator: Jill M. Sturtevant, Assistant U.S. Trustee

Place: Office of the UST, 725 S. Figueroa Street Suite 101, Ground Floor, Los Angeles

May 25, 2004

Topic: *Should Your Client File Chapter 7 Or Chapter 13?*

Speakers:

Kenneth Jay Schwartz, Debtor's Counsel,
Nancy H. Zamora, Chapter 7 Trustee,
Jennifer L. Braun, Assistant U.S. Trustee,
S. Margaux Ross, Attorney for the U.S. Trustee

Place: Office of the UST, 21051 Warner Center Lane, Suite 105, Woodland Hills

All programs take place from Noon to 1:00 p.m. They are free of charge and qualify for one hour of MCLE credit.

FRESH START –NEW SECTION COMING SOON

The Watchdog often reports cases in which the courts have found that a discharge would be a substantial abuse of Chapter 7, because debtors in fact have the ability to repay their creditors. In some of those cases, rather than having their cases dismissed, debtors have converted to Chapter 13 bankruptcy, filed plans to repay their debts, and have had those plans confirmed. In future editions of this newsletter, we will report on some of those successes.

